

General Terms & Conditions of Sale of ERG SA

I. General Provisions

1. The General Terms & Conditions of Sale set forth the rules of concluding contracts of sale of goods offered by the company under the business name of ERG SA with its registered office in Dąbrowa Górnicza, hereinafter referred to as the Seller.
2. The General Terms & Conditions of Sale, hereinafter also referred to as the GTCS, constitute an integral part of all contracts of sale concluded with the Seller, including supplementary or substitute deliveries and determine the mutual relations between the Seller and the Buyer. Any exceptions from the application of these General Terms & Conditions of Sale shall require the written form, otherwise it shall be deemed invalid.
3. The General Terms & Conditions of Sale shall be communicated and submitted for acceptance to the Buyer at the latest upon placement of the order by the latter, and they are also available on the website www.erg.com.pl.
4. Acceptance of the General Terms & Conditions of Sale by the Buyer shall take place directly by way of submission of the relevant statement in any form. In addition, the General Terms & Conditions of Sale shall be deemed to have been accepted by the Buyer if, after their transmission or indication by the Seller, the Buyer has confirmed, directly or through implicit acts, their intent to execute the contract of sale with the Seller.
5. If the Seller and the Buyer enter into subsequent contracts of sale, including in particular placement of subsequent orders by the Buyer, unless the Parties agree expressly otherwise in writing, these General Terms & Conditions of Sale shall apply to such contracts without the Buyer having to confirm each time the acceptance of their provisions, and the Buyer acknowledges that the provisions of the General Terms & Conditions of Sale may be subject to unilateral modifications by the Seller and that contracts entered into and orders placed shall be governed at any time by the current, up-to-date provisions of the General Terms & Conditions available on the website www.erg.com.pl as at the date, respectively, of conclusion of the relevant contract or placement of the relevant order.
6. Unless the Parties agree expressly otherwise in writing, no general terms and conditions of contracts or any similar documents of the Buyer shall apply to contracts of sale entered into by the Seller and the Buyer. Any exceptions from the provisions of these General Terms & Conditions of Sale shall require each time individual agreements between the Parties confirmed in the written form, otherwise deemed invalid, by persons authorised to represent the Parties. In the event of any discrepancies between the contractual terms and conditions agreed by the Parties and these GTCS, the terms and conditions of sale agreed upon contractually by the parties shall apply.
7. Lack of acceptance of these GTCS by the Buyer shall entitle the Seller to withhold the release and delivery of the goods until their acceptance by way of submission of a written statement by the Buyer. The Seller may set an additional deadline for acceptance of the GTCS, and upon its ineffective expiry the Seller may withdraw from the contract.

II. Contracts

1. The contract of sale shall be concluded on the basis of an order placed by the Buyer with the Seller in the written form. The Seller reserves the right to refuse to accept an order within 7 days of its receipt. Lack of order confirmation within this period shall be tantamount to the refusal to accept the order. If the order is not accepted, the contract shall not be concluded. The Seller reserves the right to accept the order in part, and it shall inform the Buyer about this in writing or by e-mail.
2. Changes to the terms and conditions of the contract shall be valid only if they are confirmed in writing by the Seller and they shall apply exclusively to the specific commercial transaction.

III. Offer

1. All technical information concerning the goods resulting from catalogues, brochures and other advertising materials presented by the Seller shall constitute indicative data and only apply to the extent in which it is accepted by both parties.
2. The Buyer shall be obliged to know the technical parameters of the ordered goods. The Seller shall be obliged to deliver the goods in accordance with the Buyer's order and shall not be liable for any inability to apply or use the goods for the purpose assumed by the Buyer, unless such intended use of the goods results directly from official materials made available by the Seller.
3. The prices specified in the price lists sent to contracting parties shall be binding until the Seller notifies about their change in writing. A notice of price change shall be deemed to have been effectively delivered if it is sent by e-mail to the e-mail address provided by the Buyer or by registered letter to the postal address indicated by the Buyer. The address indicated for contact shall be deemed to be the e-mail address used by the Buyer for contact with the Seller.
4. The prices of the goods offered by the Seller do not include VAT, unless expressly stated otherwise.
5. The final price of the goods shall be determined on the basis of the prices applicable at the Seller's company on the day of order placement, subject to the provisions of point 6.
6. In the event, if between the date of placing the order and the date of delivery, there is an increase in the prices of the basic raw materials for the production of films, exceeding 5% compared to the prices confirmed on the date of placing the order, the Seller reserves the right to determine the final prices of the goods based on the Seller's valid prices at the day of delivery. The increase in the prices of raw materials is determined by comparing the ICIS indexes for LDPE or HDPE granules between the date of placing the order and the day preceding the planned delivery date of the goods.
7. The provision of paragraph 6 is applicable as well, if the prices has been specified in the contract between the Seller and the Buyer and between the date of signing the contract and the date of goods delivery, there will be an increase in the prices of raw materials exceeding 5% in relation to the prices in force on the date of conclusion of the contract.
8. Any discounts, rebates, price reductions, etc. granted by the Seller shall be agreed individually in writing, otherwise they shall be deemed invalid. If the Seller makes a proposal regarding the amount or rate of discounts, rebates, price reductions, etc. rebates, etc., such discounts, rebates, price reductions, etc. shall be valid after their confirmation by the Buyer. Independently of the confirmation of the new amount or rate of discounts, rebates, price reductions, etc., the previously agreed rates shall lose their validity upon delivery of the offer to the Buyer.

IV. Orders

1. Orders should be placed in the written form and specify the exact name and address of the Buyer, the range and quantity of the goods ordered, the date and place of delivery, the form and date of payment agreed with the Seller, and they should be signed by a person authorised to place orders on behalf of the Buyer. Orders that do not contain the required information or placed in an incorrect form may be left without an answer by the Seller and consequently not accepted for fulfilment.
2. Orders placed by the Buyer may not contain modifications to the terms of the Seller's offer without prior written approval and confirmation with the Seller, and if such modifications are made without the Seller's approval, they shall be considered ineffective and not binding upon the Seller.
3. The goods shall be sold on a quantity basis by sales units (e.g. pieces, packaging units, units of weight).
4. The Buyer shall be responsible for making sure that the technical data, quality and quantity of material specified in their order or in the contract correspond to their needs. If the order does not specify conformity of the material with a standard or does not contain a description of the required quality of the material, the ordered goods shall be delivered as standard goods, which should conform to the Seller's specifications. In this situation, the Seller shall not be responsible for special quality requirements.
5. Approvals, certificates, declarations of conformity or other documents confirming the quality of the goods shall be attached to the delivered document of release of the goods at the express request of the Buyer, submitted before the date of shipment of the goods.

V. Complaints

1. The Buyer shall be obliged to check the goods delivered in terms of quantity and quality for any non-latent defects, upon their receipt from the carrier or courier, and in the case of personal collection – at the moment of collection of the goods from the Seller's warehouse. Any discrepancy in terms of quantity or the occurrence of non-latent defects in the shipped goods must be suitably recorded in the consignment note and signed by the driver (courier) and the person taking over the delivered goods or in the goods release document. If no such entry was made in the consignment note (release document), complaints related to quantity and quality based on claims of quantitative non-conformity or non-latent defects shall not be examined.
2. Any complaints related to quantity must be lodged immediately after receipt of the goods, and in any case not later than on the first day after receipt of the goods, otherwise any rights related to quantitative deviations shall be lost.
3. Any complaints related to quality, subject to paragraph 1 above, must be lodged immediately upon receipt of the goods, and in any case not later than within 14 days after the defects in the goods are revealed, otherwise any rights related to qualitative deviations shall be lost.
4. In any case complaints related to quality may not be lodged not later than within 1 month from the date of release of the goods to the Buyer. In the case of latent defects, the Buyer may submit complaints related to quality not later than within 1 month from the date of detection of the defect, but in any case not later than within 12 months from the date of manufacture of the goods, indicated on the label, subject to the provisions of paragraph 5. When complaints are examined, their legitimacy shall be assessed taking into account the applicable technical standards and the Seller's specifications.
5. The Seller grants a ionization guarantee for a period of 6 months from the date of manufacture indicated on the label.
6. Complaints should be lodged in writing by registered letter or e-mail (with confirmation of receipt by the recipient). Complaints lodged in different forms shall be left unexamined.
7. A complaint related to quality should include a description of the defect found and photographic documentation, including a picture of the label of the product the complaint concerns. At the Seller's request, the Buyer shall be obliged to send a sample of the goods the complaint concerns. If the complaint does not contain the data indicated above, the Seller shall request that the data be supplemented, setting an additional deadline for this purpose. The deadline for the complaint to be examined shall run from the date on which the complaint has been supplemented by the Buyer. If the complaint is not supplemented within the deadline set for that purpose, it shall remain unexamined.
8. The challenged goods should be available in an unprocessed form to the Seller throughout the duration of the complaint handling process, until its completion, i.e. until the Seller sends information.
9. In the case of defects in the goods revealed during or after processing thereof, the Seller's liability shall be limited only to those defects in the goods whose earlier detection was impossible with the exercise of due diligence. In such a case, only the quantity of goods in the processed form required to find the defect with the exercise of due diligence may be covered by the complaint. The remaining part of the relevant lot of the goods may be subject to complaint only in the unprocessed form. The Seller shall not be liable for organisational solutions adopted by the Buyer.
10. If the complaint is considered justified, the Seller may, at their own discretion, replace the goods with a new product free from defects, or collect the defective product and return the price paid for the defective product to the Buyer. Handling of the complaint in the manner described above shall exclude the possibility of claiming further compensation.
11. If the Buyer accepts the goods as ones that meet their requirements despite the defects revealed, that Buyer may demand that the price be reduced accordingly.
12. The Seller may refuse to accept the complaint if the goods have been improperly used or processed by the Buyer.
13. If only some of the goods delivered and sold are defective and it is possible to detach from the defect-free goods, the Buyer's right to cancel order fulfilment or withdraw from the contract related to the fulfilment of their order shall be limited exclusively to the defective goods.
14. Until the final examination of the complaint, the Buyer shall be obliged to keep the goods the complaint concerns in a proper manner, preventing their potential damage, soiling or losses.
15. If, due to a physical defect in the goods, the Buyer withdraws from the contract concerning the fulfilment of their order or demands delivery of defect-free goods instead of defective ones, they shall not send back the goods without the Seller's prior consent.

16. The Seller's liability for damage resulting from the existence of defects if rights are exercised under the statutory warranty for defects is excluded pursuant to Article 558 of the Polish Civil Code.
17. The Seller's liability for consequential and indirect damages shall be excluded.
18. The Seller's liability shall be limited to the purchase value of the goods the complaint concerns.
19. Challenging the goods in terms of quantity and/or quality shall not entitle the Buyer to withhold payment for the deliveries completed.
20. The Seller shall not be liable for goods used in a manner inconsistent with their intended use and technical properties, in which damage has occurred as a result of failure to comply with the recommendations and instructions.
21. The Seller shall not be liable for damage caused during unloading of the goods. The Seller's liability shall continue until the Buyer signs the shipping documents.
22. The Seller shall have the right to withhold the satisfaction of the Buyer's claims under the complaint until the Buyer has paid all overdue amounts.
23. By accepting this complaint procedure, the Buyer waives their right to have their claims set off.
24. Returns of goods that have been challenged by the Buyer and acknowledged by the Seller shall be accepted provided that the goods are not damaged, that they have not been processed by the Buyer and that they are traceable to the parameters contained in the documentation provided to the Buyer. In the case of goods packaged in the manufacturing plant, they must be in their original, undamaged packaging.
25. Goods shall be returned only after prior written notice given to the Seller and after obtaining the Seller's written confirmation/acceptance. The return shipment must be properly secured during transport. Details of the packaging shall be included in the relevant notice.
26. If any dispute arises as to whether a complaint concerning defective goods is justified, the Parties shall have the goods examined by an independent testing body indicated by both Parties. The costs of an unjustified complaint, including any costs related to the performance of the test referred to above, shall be borne by the Buyer.

VI. Deliveries

1. Delivery of goods purchased by the Buyer shall be performed on the basis of the Buyer's order.
2. Unless the Parties agree otherwise, deliveries shall be executed FCA Buyer's registered office or warehouse (according to INCOTERMS 2020). Unless the parties expressly agree otherwise, orders indicating places of delivery other than those indicated above (this applies in particular to the registered office or place of business of the Buyer's contracting parties) shall not be fulfilled. If the Buyer intends to collect the goods on their own, such circumstance should be indicated in the order.
3. The Seller shall be bound by the delivery date only if it complies with the applicable delivery rules or if they confirm different delivery conditions in writing.
4. Failure to meet the delivery date by the Seller entitles the Buyer to assert his statutory rights only if the Seller, despite confirming the delivery date indicated in the order or an additional date agreed with the Buyer, still fails to deliver, despite a written request.
5. The delivery date is extended for the duration of the obstacle caused by circumstances beyond the control of the Seller, i.e. e.g. suspension of deliveries or untimely deliveries of raw materials by the Seller's suppliers, force majeure events, unpredictable disruptions in the Seller's production facility, lack of electricity, transport and customs delays, damage of production lines, transport damages, road blockades, limitations in road traffic of truck deliveries, electricity shortages, shortages of materials and raw materials, restrictions in the scope of business, movement, transport introduced by acts of public authority, etc. Failure to meet the delivery date by the Seller, based on the above-mentioned causes, does not entitle the Buyer to any claims for compensation of damages resulting from non-performance or untimely performance of the contract.
6. In the event that the expected duration of the obstacles described in paragraph 5 exceeds 1 month, the Seller is obliged to inform the Buyer about it. In this case, both the Buyer and the Seller are entitled to cancel the order or the contract from which the Seller is obliged to perform the delivery of the goods, to the extent that it is affected by such obstacles.
7. If the Parties have agreed that the Buyer will collect the goods using their own transport, the collection should take place within 2 working days after the notice of availability of the goods in the Seller's warehouses. The Buyer shall be obliged to notify the Seller at least 12 hours in advance about the planned time of collection of the goods

(with an accuracy of +/-3 hours). Collection is possible from Monday to Friday during the working hours of the warehouse (8:00 a.m. – 3:00 p.m.). In the event of a delay in collection, the Buyer may be charged with storage costs, without prejudice to the Seller's other rights. Each partial delivery should constitute a separate transaction and may be invoiced separately by the Seller.

8. If the goods are delivered using the Seller's (or their suppliers') means of transportation, the Buyer must provide all the means required to enable efficient unloading of the vehicle.
9. The costs of delivery to the Buyer and of other additional services shall be determined individually when the order is placed. All other costs that may arise during order fulfilment, e.g. repackaging, cutting, film-wrapping, transshipment and other fees and taxes applicable during order fulfilment shall be borne by the Buyer, unless the parties have agreed otherwise.
10. The Seller makes it clear that, in the case of overdue payments, failure to pay interest on delayed payments, or exceeding of credit limits by the Buyer and other actions of the Buyer to the Seller's detriment, the fulfilment of subsequent orders shall be withheld until the relevant payments are made.
11. When performing deliveries, due to the nature of the products offered, the Seller reserves a quantitative precision margin in order fulfilment at the level of plus or minus 10%, and as far as timeliness is concerned: plus or minus 48 hours in relation to the planned delivery date.

VII. Passage of Risk

1. Unless specified otherwise in writing, the risk of accidental destruction or loss of goods delivered shall lie with the Seller, including in the time of transport carried out by the forwarder or carrier following the Seller's order.
2. If the goods are collected by the Buyer, the risk of accidental destruction or loss of the goods delivered shall pass to the Buyer at the moment of release of the goods to the Buyer or to the Buyer's carrier, on the premises of the Seller's.
3. In the absence of specific arrangements, which should be reflected by appropriate provisions in the Buyer's specification, delivery shall take place at the Seller's discretion and without any guarantee as to the selection of the fastest and least expensive manner of shipping of the goods.

VIII. Packaging

1. The Seller shall make every effort to make sure that the goods are packaged properly.
2. The costs of materials used for packaging shall be considered part of the Seller's own costs shall not be returned, except in the case of returnable pallets.
3. Unless otherwise agreed by the Parties, the pallets on which the Seller delivers the goods to the Buyer shall be returned and shall be collected by the Seller or a third party authorised by the Seller once a month. The Seller or the third party authorised by the Seller shall provide information on the time of pallet collection by e-mail or fax at least 2 days in advance.
4. The Seller shall keep records of the pallets which are in the Buyer's possession and are subject to return. Upon the Buyer's request, the Seller shall make the records available to the Buyer.
5. If the Buyer fails to return the pallets in the number resulting from the statement sent within the specified time limit, the Seller shall issue a VAT invoice to the Buyer due within 7 days for the amount corresponding to the product of multiplying the number of packaging units not returned in due time by the cost of a single pallet. The pallet cost shall be determined in accordance with the current price list of the Seller or of the third party authorised by the Seller. In addition, the Seller shall have the right to credit payments of other amounts due made by the Buyer in the first place against unpaid VAT invoices for pallets.
6. At the Buyer's request, the Seller shall be obliged to collect the cores delivered with the goods at no extra charge, provided that the cores are in good condition and have been properly packaged on a pallet.

IX. Compensation

1. The Seller makes it clear that the Buyer's claims for damages related to the fulfilment of the Buyer's order, resulting from defects, unless they result from the Seller's wilful misconduct, shall be excluded.
2. The Buyer undertakes to strictly comply with the instructions concerning further use of the goods. The Seller's liability shall be excluded if the Buyer fails to comply with the instructions for use, if such instructions have been submitted to the Buyer.
3. The Seller's liability towards the Buyer shall be limited to the price of the purchased goods.

X. Payment Terms

1. Payment for the goods received shall be made without any deductions immediately upon issuing of the invoice or in accordance with the agreed payment terms.
2. The Buyer shall become the owner of the goods at the moment of receipt of the goods and of the invoice, unless different terms are indicated in the invoice.
3. The effective date of payment made by the Buyer shall be the date on which the amount due credits the Seller's bank account.
4. In the event of a delay in payment, the Seller shall be entitled to charge statutory interest for the delay without further requests to comply and compensation for debt recovery costs referred to in Article 10, paragraphs 1–2 of the Act of 8 March 2013 on counteracting excessive delays in commercial transactions. The interest for delay shall be calculated from the day following the day on which the payment deadline expired.
5. In the event of payment past the due date, the Seller shall be entitled to claim, in addition to the principal amount, interest for delay and compensation for the debt recovery costs referred to in paragraph 4, as well as for court, enforcement, legal representation costs and any other fees and costs related to the collection of the relevant debt.
6. If the Buyer is in delay with payments due under more than one invoice, the Seller shall be entitled to credit any payment made by the Buyer under any invoice in the first place against the interest for delay and the compensation for debt recovery costs, and subsequently against the oldest outstanding principal amounts.
7. The Buyer shall not have the right to make a set-off statement towards the Seller.
8. Bank guarantees, deposits, mortgages, pledges and bills of exchange shall be accepted only for the purpose of securing claims, after prior agreement with the Seller.
9. The Seller shall be entitled to make order fulfilment dependent on a prepayment in the amount set by the Seller or on the submission of a security accepted by the Seller, in particular:
 - if the entity insuring the Seller's receivables refuses to grant a credit limit to the Buyer,
 - if the Buyer is in delay with payments for insurance covering the Buyer, or
 - if the Buyer's financial standing is poor.
10. The Buyer undertakes to immediately notify the Seller in writing about each change of its registered office or place of residence and address for service of correspondence (including e-mail address and fax number, if provided to the Seller). Failure to provide this notice shall result in service to the addresses indicated in the order or in signed contracts or other commercial agreements being deemed effective.

XI. Force Majeure

1. The Seller reserves the right to unilaterally change the order fulfilment date if disruptions occur in the Seller's current activity caused by force majeure circumstances.
2. Force majeure shall mean circumstances independent of the parties, which cannot be predicted on the date of conclusion of the contract/placement of the order, and which neither Party is able to prevent, including in particular extraordinary natural phenomena (earthquakes, volcanic eruptions, floods, fires, tornadoes, etc.), epidemics, wars, states of emergency, administrative restrictions, strikes, lockouts, power cuts, etc.
3. The Buyer shall be obliged to inform the Buyer immediately about the occurrence of force majeure circumstances affecting the Buyer.

4. If it is impossible to collect the goods ordered due to the occurrence of force majeure affecting the Buyer, the Seller should be immediately informed about this circumstance, not later than 72 hours before the planned date of shipment of the goods (if the Seller is responsible for transport). A delayed notice shall be deemed ineffective, and the Buyer shall be obliged to collect the goods independently of the force majeure circumstances, and if collection is impossible, the goods shall be handed over for storage in the warehouse (own or third-party warehouse), and the Buyer shall be obliged to cover the costs of transport and storage.
5. If the Seller obtains a notice stating that it is impossible to collect the goods due to force majeure circumstances suitably in advance, the Seller shall withhold delivery of the goods ordered until such circumstances cease to exist. In such a case, the Seller shall confirm by e-mail to the Recipient the date when the ordered goods will be available for collection (shipment) and when the goods will be handed over to the warehouse.
6. The delivery shall be considered performed, and the Seller shall be considered entitled to issue the invoice for the price of the goods respectively on the date of shipment dispatch (in the cases described in point 4, second sentence) or on the date when the ordered goods are made available for collection/shipment (in the cases described in point 5). The goods shall remain available for collection by the Buyer or for shipment to the address indicated by the latter after a new collection/shipment date has been agreed. The cost of storage of the goods for the duration of force majeure circumstances shall be borne by the Seller.
7. In the event of disruptions in the current activity of the Seller due to force majeure with an estimated duration exceeding 1 month, the Seller is obliged to immediately inform the Buyer of such circumstances. In this case, both the Buyer and the Seller are entitled to cancel the order or the contract from which the Seller's obligation to perform the delivery of the goods, to the extent that it is affected by such obstacles.

XII. Miscellaneous

1. These GTCS shall enter into force on 24-th of February 2021.
2. These GTCS shall apply also to orders placed after the date indicated in point 1 above on the basis of written contracts of sale (including framework contracts) concluded by the Seller before the date indicated in point 1 above, subject to the Buyer's acceptance of the GTCS.
3. Whenever these GTCS envisage the written form for representations/declarations, notices, orders, etc., correspondence sent electronically or by fax shall be deemed acceptable and sufficient for this purpose.
4. The legal relationships with the Buyer shall be governed exclusively by the laws of Poland.
5. The Seller and the Buyer shall strive to settle amicably any disputes arising in connection with the performance of contracts covered by these terms and conditions. If amicable settlement is impossible, any disputes arising directly or indirectly from these arrangements shall be settled by common courts of law having territorial jurisdiction over the Seller's registered office.
6. Assignment of rights resulting from a contract concluded with a Supplier or from an order placed towards third parties shall not be allowed without the Seller's written consent.
7. In the event of invalidity of certain provisions of the GTCS, including due to the enactment of different statutory regulations, the remaining provisions shall remain valid.
8. By accepting the GTCS, the Buyer expresses their consent to the processing of their personal data by the Seller for the purpose of order fulfilment.
9. By accepting these GTCS, the Buyer agrees to the processing of their personal data by the Seller in connection with the performance of contracts for the sale of goods offered by the Seller. The Buyer shall enjoy all the rights resulting from the provisions of the Act of 29 August on personal data protection (Polish Journal of Laws Dz.U. of 1997, no. 133, item 833 as amended) and from Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 2016, p. 1), including in particular the right to access their data and demand their rectification, erasure, restriction of processing, transfer of data, and the right to object to data processing.
10. The provisions of the Civil Code and of the Act of 8 March 2013 on counteracting excessive delays in commercial transactions shall apply accordingly in matters not governed by the provisions of these GTCS.